FILE COPY

No. 468

In the Supreme Court of the United States

October Term, 1931

ROBERT M. LEACH, EXECUTOR, PETITIONER

v.

MALCOLM E. NICHOLS, FORMERLY COLLECTOR OF INTERNAL REVENUE

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts (R. 147–157) is reported in 42 F. (2d) 918. The opinion of the Circuit Court of Appeals for the First Circuit (R. 163–173) is reported in 50 F. (2d) 787.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 10, 1931. (R. 195.) A petition

for rehearing (R. 175) was filed July 9, 1931, and was denied July 22, 1931 (R. 195). The petition for a writ of certiorari was filed October 19, 1931, and was granted December 7, 1931. (R. 196–197.) The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the petitioner can maintain this suit where the claim for refund on which it is based did not mention the ground on which the suit is brought, and this ground was not raised until an amendment to the claim for refund was filed after the statutory period for filing a claim had expired and after the institution of the suit.

2. Whether Massachusetts legacy and succession taxes were deductible from a decedent's gross estate for the purpose of computing the Federal estate tax under the Revenue Act of 1916.

3. Whether the issue of deductibility was properly before the Circuit Court of Appeals for decision.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendices to this brief, *infra*, pp. 19–25.

STATEMENT

This action was brought in the District Court by the petitioner, as executor, to recover a portion

of the Federal estate tax collected by the respondent from the estate of William E. Walker, who died a resident of Massachusetts on November 9, 1918. (R. 20, 163.)

In May, 1919, the executor filed a return and paid an estate tax of $37,700.68. (R. 21, 163.) The Commissioner of Internal Revenue on March 18, 1922, determined that the tax due was $89,735.64. (R. 21.) On March 27, 1922, the additional tax was paid. (R. 22.)

On June 20, 1925, the executor filed a claim for refund of $49,634.74, with interest of $10,423.29 (R. 24–30, 59, 65), setting forth two grounds for the claim, which did not include the contention as to the Massachusetts taxes later asserted. On December 1, 1925, this suit was instituted by the executor in the District Court for Massachusetts, and on March 16, 1926, the original declaration was filed in this action, based only upon the two grounds specified in the claim of June 20, 1925. (See R. 164.) The case was tried on this declaration, judgment was entered for the respondent, but was reversed on appeal (23 F. (2d) 275), and the case was sent back for a new trial (R. 3).

On October 8, 1928, the District Court allowed the petitioner to amend his declaration, and he then for the first time claimed deductions from the decedent's gross estate of certain items, including the Massachusetts legacy and succession taxes. (R. 12–16.) In this amended declaration there was no allegation that any claim for refund had ever

been filed. The respondent filed an amended answer (R. 19–20), setting up as a defense that in the claim for refund filed June 20, 1925, the deductibility of the Massachusetts taxes was not mentioned and that consequently that claim did not furnish sufficient ground for recovery of any part of the Federal estate tax.

On May 3, 1929, three years after the time for filing a claim for refund had expired under the statute, more than three years after this action was brought, and seven months after the filing of the amendment to his declaration (which, of course, did not aver that a claim for refund on the new grounds had been filed), the executor filed with the Collector what he described as an "Amendment to Claim for Refund of Taxes Illegally Collected," which set up a claim for a refund based upon the deductibility of the Massachusetts taxes and other matters no longer in controversy. (R. 55, 65, 133–135.)

In February, 1930, the case was tried to the court, a jury having been waived in writing. (R. 32–33.) The respondent moved at the opening of the second trial that the action be dismissed on the ground that the declaration failed to allege that any claim for refund because of the Massachusetts taxes had been filed with the Commissioner prior to the commencement of the action or prior to the date of the amendment to the declaration in September, 1928, and at the close of the evidence the respond-

ent renewed the motion on the ground that the evidence showed that no claim for a refund on the new grounds was presented within four years of the payment of the tax or prior to the bringing of the action or the date of the amendment. (R. 35, 53.)

The District Court disallowed certain deductions claimed, but held that the petitioner was entitled to recover "to the extent that the tax was increased by the refusal of the Commissioner to deduct the legacy and succession tax paid to the Commonwealth of Massachusetts." (R. 156.)

The respondent appealed from the judgment of the District Court. The Circuit Court of Appeals did not pass on the question whether the claims set up in the "Amendment to Claim for Refund" were barred, but held that the Massachusetts legacy and succession taxes were not lawful deductions from a decedent's gross estate for the purpose of computing the Federal Estate Tax under the provisions of Section 203 of the Revenue Act of 1916. (R. 169.)

SUMMARY OF ARGUMENT

I

Recovery on the ground that the Massachusetts succession tax was deductible from the gross estate for Federal estate tax purposes is barred because no claim for refund on such a ground was timely filed. One claim for refund was filed in due time. It did not suggest this ground. There was no indication

to Government officials that the petitioner would rely on the ground now raised until more than four years after payment of the tax sought to be recovered. Then this suit was brought alleging this ground in an amended declaration. But as no claim for refund on this ground had been filed, we contend no recovery may be allowed. The "Amendment to the Refund Claim," filed even later than the amended declaration, can not operate to remove the bar of the statute of limitations.

II

The Revenue Act of 1916 permits the deduction only of charges that affect an estate as a whole and not those that affect solely the rights of individual beneficiaries. The Massachusetts succession and legacy tax falls within the latter category. The declaration of the Supreme Judicial Court of Massachusetts that the tax is not on the decedent or his estate but on the beneficiaries and their privilege of succession has been accepted by this Court as a true statement of the character of the tax, and must be accepted as controlling in this case. Accordingly, the petitioner was not entitled to the deduction claimed.

III

The question of the deductibility of the Massachusetts taxes was raised by the amended pleadings. It was decided by the District Court and was the sole basis for the recovery allowed. The ruling

was assigned as error. (R. 159, 160.) It follows that the Circuit Court of Appeals could properly act on the issue. Furthermore, the petitioner can not recover unless this issue is decided in his favor.

ARGUMENT

I

THE PETITIONER'S FAILURE TO FILE A CLAIM FOR REFUND PRESENTING THE GROUNDS NOW URGED WITHIN THE STATUTORY PERIOD PROHIBITS ANY RECOVERY.

Section 3226 of the Revised Statutes, reenacted in Section 1113 of the Revenue Act of 1926 (*infra*, p. 22), provides that—

> No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax * * * until a claim for refund or credit has been duly filed * * * according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury * * *.

Regulations 68 (1924 ed.) in force when the first claim for refund was filed on June 20, 1925, provided in Article 99 (*infra*, p. 25) that—

> Claims for refund must be presented to the Commissioner within four years next after payment of the amount sought to be refunded. Such claim must be made on form 843. * * * All the facts relied upon in support of the claim should be clearly set forth under oath * * *.

The tax in question in this case was paid by the petitioner on March 27, 1922. (R. 22.) On June

20, 1925, the petitioner filed a claim for refund in which two grounds were stated, neither of which related to the present question concerning the Massachusetts taxes. (R. 59, 65.) The present action was commenced on December 1, 1925, less than six months after the filing of the claim and prior to its rejection. (R. 60, 65.) On January 16, 1926, the Commissioner of Internal Revenue rejected the claim for refund. (R. 60, 65.) On March 27, 1926, the four-year period for filing claims for refund expired. The contention that the Massachusetts tax was deductible from the gross estate for Federal estate tax purposes, was never brought to the Commissioner's attention until March 6, 1928, when at some hearings before the Commissioner this contention was informally suggested to him. On October 8, 1928, the petitioner filed an amended declaration. (R. 12.) In this amended declaration the petitioner asserted for the first time in court his contention regarding the Massachusetts taxes, but there is no allegation in this declaration that any claim for refund had ever been filed or rejected by the Commissioner. On May 3, 1929, the petitioner filed with the respondent an "amendment" to his original claim for refund, asserting his claim with respect to the Massachusetts taxes for the first time. (R. 55, 63.)

When the first refund claim was filed on June 20, 1925, the petitioner had every opportunity to base his claim upon this contention. His neglect to

suggest the deductibility of the Massachusetts succession tax was not due to lack of opportunity but rather to his belief that a claim for such a deduction would be rejected. This fact was accepted by the District Court of Massachusetts as excusing the petitioner's failure to include this ground in his first claim for refund and thus inform the Commissioner of his position. The District Court stated (R. 155):

> Nor do I think the plaintiff should be prejudiced by his failure to include in the original claim for refund a claim based on the refusal of the Commissioner to deduct the Massachusetts tax. The published opinions and rulings of the Commissioner extant when the claim was filed precluded, so far as the taxing authorities were concerned, all hope and expectation of such a deduction from the gross estate. The law does not require an act that would have been idle or useless at the time.

There can be no doubt but that the District Court erred in this conclusion. The identical question was presented to this Court in *United States* v. *Felt & Tarrant Co.*, 283 U. S. 269, where this Court stated (p. 273):

> The necessity for filing a claim such as the statute requires is not dispensed with because the claim may be rejected. It is the rejection which makes the suit necessary. An anticipated rejection of the claim, which the statute contemplates, is not a ground for

suspending its operation. Even though formal, the condition upon which the consent to suit is given is defined by the words of the statute and "they mark the conditions of the claimant's right."

We contend that the first claim for refund filed June 20, 1925, can not support the present suit for it gave the taxing officers no indication that a refund would be sought on the ground that the Massachusetts tax was deductible from gross estate. *Red Wing Malting Company* v. *Willcuts,* 15 F. (2d) 626, 635 (C. C. A. 8th), certiorari denied, 273 U. S. 763. The petitioner's contention that the original claim for refund was sufficient because it specified "or such greater amount as is legally refundable" (Br. 28) is withut merit. *Jonesboro Grocer Co.* v. *United States,* 66 C. Cls. 320, 326, certiorari denied, 280 U. S. 562; *Art Metal Construction Co.* v. *United States,* 47 F. (2d) 558 (C. C. A. 2d), certiorari denied, 283 U. S. 863; *Zeller* v. *United States,* 46 F. (2d) 1023 (C. C. A. 2d), certiorari denied, 283 U. S. 863. Furthermore, the claim which this Court held insufficient in *United States* v. *Felt & Tarrant Co., supra,* stated that it was filed to "protect all possible legal rights of the taxpayer."

But the petitioner contends that the real ground for refund was set out in the second claim for refund which he entitled an "Amendment to the Claim for Refund," and that the situation is the same as if the real ground for refund had been

called to the attention of the Government officials in June, 1925. This second claim sets up an entirely new basis for refund. The situation is similar to that presented by an amended declaration which seeks to introduce a new cause of action or to bring in new parties defendant. With respect to the statute of limitations such an amendment does not date back to the original declaration but is equivalent to a new declaration. *Miller* v. *McIntyre,* 6 Peters 61; *Sicard* v. *Davis,* 6 Peters 124. See also *Seaboard Air Line Railway* v. *Renn,* 241 U. S. 290. We submit that this amended claim, filed more than four years after the payment of the taxes sought to be recovered is ineffective as a basis for this suit. *Jonesboro Grocer Co.* v. *United States, supra,* 66 C. Cls. 320, certiorari denied, 280 U. S. 562.

Under Section 3228 of the Revised Statutes, as amended by Section 1012 of the Revenue Act of 1924, and Section 1112 of the Revenue Act of 1926 (*infra,* pp. 19–20, 21–22) the petitioner was required to file his claim for refund within four years of the date of payment of the tax. The bar of this statute of limitations fell on March 27, 1926. It was not until two years later that the question of the deductibility of the Massachusetts tax was informally brought to the Commissioner's attention at a hearing. Two and one-half years after the bar of the statute had fallen the petitioner amended his declaration to add this new ground as a new cause

of action. More than three years after the bar had fallen he attempted to amend his first claim for refund. But R. S. 3226 (*infra,* pp. 20–21) expressly requires the filing of a claim for refund prior to a suit or proceeding for the recovery of the tax. The amendment of the petitioner's declaration to include this cause of action on October 8, 1928 (R. 12), was seven months before the amended claim for refund was filed on May 3, 1929 (R. 133). Consequently, even if the amended claim were valid, this suit was prematurely brought.

II

THE MASSACHUSETTS SUCCESSION AND LEGACY TAX WAS NOT DEDUCTIBLE FROM THE DECEDENT'S ESTATE FOR FEDERAL ESTATE TAX PURPOSES

Section 203 (a) 1 of the Revenue Act of 1916 (*infra,* p. 19) provides in substance that the value of the net estate shall be determined by deducting from the value of the gross estate, among other things, "claims against the estate, * * * and such other charges against the estate, as are allowed by the laws of the jurisdiction * * * under which the estate is being administered." This Court has interpreted the provision "charges against the estate" as charges that affect the estate as a whole. Taxes assessed on the right of succession of the individual beneficiaries are not deductible. *New York Trust Company* v. *Eisner,* 256

U. S. 345, 350; *United States* v. *Woodward,* 256 U. S. 632, 635.

This Court has always recognized as final the construction and definition of a state taxing act by the court of last resort of the State in question. Any conflict of authority between the various States on similar or analogous statutes is of no significance. The court of the State concerned has final jurisdiction to determine the construction and effect of its own taxing laws. *New York Trust Company* v. *Eisner, supra; Keith* v. *Johnson,* 271 U. S. 1; *United States* v. *Mitchell,* 271 U. S. 9; *Stebbins* v. *Riley,* 268 U. S. 137. In the event of conflicting decisions by the state court of last resort the latest decision is considered the authoritative and definitive construction. *Keith* v. *Johnson, supra.*

The Supreme Judicial Court of Massachusetts has consistently interpreted the legacy and succession tax of that Commonwealth as being a succession tax levied upon the right of the beneficiary to receive the bequest. *Attorney General* v. *Stone,* 209 Mass. 186, 190; *Magee* v. *Commissioner,* 256 Mass. 512; *Boston Safe Deposit & Trust Co.* v. *Commissioner,* 267 Mass. 240. This Court has already recognized with approval these Massachusetts decisions as defining the tax here involved as a succession tax. *Saltonstall* v. *Saltonstall,* 276

U. S. 260, affirming 256 Mass. 519. There this court said (pp. 269–270):

> In this and earlier cases the Massachusetts court has held that the tax authorized by these statutes is a tax upon "succession" which includes the "privileges enjoyed by the beneficiary of succeeding to the possession and enjoyment of property." * * * This construction of the statutes by the state court we accept.

Any possible remaining doubt as to the nature of the Massachusetts tax is dispelled by the decision of the Supreme Judicial Court in *Coolidge* v. *Commissioner*, 268 Mass. 443, 447, where that court reiterated its earlier statements that the tax was a succession tax, and quoted with approval the above characterization of the tax by this Court in the *Saltonstall* case. In reversing this Massachusetts decision on other grounds in *Coolidge* v. *Long*, 282 U. S. 582, 596, this Court again referred to the Massachusetts court's construction of the state law as a succession tax.

The petitioner suggests possible conflicts in the earlier decisions of the Massachusetts court on the nature and incidents of this tax. We submit that the quotations from these authorities do not indicate any vacillation of opinion by that tribunal as to the nature of the tax. In any event the most recent consideration of the problem by the Supreme Judicial Court in the *Coolidge* case is clear and unequivocal and renders immaterial any earlier

inconsistent statements by the court. The petitioner also relies on *Merrill* v. *United States*, 66 C. Cls. 136, and *Thayer* v. *Malley*, 3 F. (2d) 194, where the Court of Claims and the District Court of Massachusetts held that the Massachusetts tax was a transfer tax rather than a succession tax and was therefore deductible from the gross estate of the decedent. But these are opinions of Federal courts and their construction of the Massachusetts statute is no authority as to the actual character of the tax. The only effect of these decisions as to the nature of the tax is their possible persuasive influence upon the Massachusetts court. But the Massachusetts court despite these decisions has the ultimate responsibility of finally determining the nature of the taxing statute. Moreover these decisions of the Federal courts were rendered prior to the opinion by the Supreme Judicial Court of Massachusetts in the *Coolidge* case in 1929, and in view of that later decision can have no weight whatsoever.

Petitioner insists that the Massachusetts tax, even if theoretically a succession tax upon the right of the beneficiary to receive the property, still is deductible from the gross estate under the provisions of the Revenue Act of 1916 because it is collectible from the executor and representatives of the estate. But this is a method of collection that is not necessarily conclusive. Its purpose is to minimize the opportunity for avoidance of the pay-

ment of the tax. See *Keith* v. *Johnson*, 271 U. S. 1, 7. It does not render the tax a charge against the estate.

III

THE ISSUE IN RESPECT OF THE MASSACHUSETTS INHERITANCE TAX WAS PROPERLY BEFORE THE COURT BELOW

In spite of the fact that he urged a review by this Court of the decision of the Circuit Court of Appeals on the ground that the question decided by that court involved the construction of "a Federal law * * * which, as a matter of public concern, should be conclusively settled by this Court" (Pet. 10), the petitioner relies upon a technical objection to prevent a determination of that same issue. His position in substance is that the question of the deductibility of the state succession tax was not ruled upon by the District Court and that in consequence it was not properly before the Circuit Court of Appeals.

The record indicates the contrary. The petitioner's amended declaration alleged a failure by respondent to allow the deduction of the Massachusetts tax. (R. 15.) In addition to a general denial the answer to this pleading asserted the petitioner's failure to present the claim in proper season. (R. 19.) The facts in respect of the point were agreed upon and submitted to the court. (R. 23.) Findings and ruling were requested by both parties covering the issue (R. 55, 56, 57, 61) and were adopted by the court (R. 65). In its opin-

ion the court recited the facts (R. 149), and thereupon specifically held that "the Massachusetts legacy and succession tax * * * was legally deductible" (R. 156). The respondent assigned error on the point. (R. 159, 160.)

Upon these facts we submit that the petitioner's contention is unsound. The District Court passed upon the question on its merits. This point was the sole basis for the petitioner's recovery. (R. 156.) An appeal to the Circuit Court of Appeals reviews final decisions of the District Court and is not limited to the defenses urged in the court below. Judicial Code, Sec. 128, as amended (U. S. C., Title 28, Sec. 225); Judicial Code, Sec. 269, as amended (U. S. C., Title 28, Sec. 391). It is significant, too, that in his brief before the Circuit Court of Appeals the petitioner framed the third issue in these words (Br. below p. 16):

> Did the Court err in holding that the "Massachusetts inheritance tax" was a proper deduction under Section 203 of the Act?

Petitioner's brief did not urge that the issue was not properly before the appellate court.

In any event the Circuit Court of Appeals did consider and decide the question. This we submit it had a right to do. *United States* v. *Williams,* 278 U. S. 255, 256; *Dobbins* v. *Commissioner,* 31 F. (2d) 935, 937 (C. C. A. 3d). Furthermore, the petitioner can not recover unless this question is decided in his favor.

CONCLUSION

For these reasons it is respectfully submitted that the decision of the Circuit Court of Appeals should be affirmed.

Respectfully submitted.

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FEBRUARY, 1932.

APPENDIX A

FEDERAL STATUTES

Section 203 of the Revenue Act of 1916, c. 463, 39 Stat. 756, 778 provides in part:

> SEC. 203. That for the purpose of the tax the value of the net estate shall be determined—
>
> (a) In the case of a resident, by deducting from the value of the gross estate—
>
> (1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; * * *.

The Revenue Act of 1924, c. 234, 43 Stat. 253, 342, 343, provides in part:

> SEC. 1012. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:
>
> "SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without author-

ity, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the Revenue Act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

"(b) Except as provided in section 281 of the Revenue Act of 1924, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed."

(U. S. C., Title 26, Sec. 157.)

SEC. 1014. (a) Section 3226 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3226. No suit or proceeding shall be maintained in any court for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim unless the

Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

(b) This section shall not affect any proceeding in court instituted prior to the enactment of this Act. (U. S. C., Title 26, Sec. 156.)

The Revenue Act of 1926, c. 27, 44 Stat. 9, 115, provides in part:

SEC. 1112. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in sections 284 and 319 of the Revenue Act of 1926, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

"(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from

allowance by the period of limitation then in existence, shall not be allowed."

(U. S. C., Supp. V, Title 26, Sec. 157.)

Section 1113 of the 1926 Act (U. S. C. Sup. V, Title 26, Sec. 156) reenacted Section 3226 of the Revised Statutes as amended by Section 1014 of the Revenue Act of 1924, above quoted.

APPENDIX B

MASSACHUSETTS STATUTES

The Massachusetts statutes in force on November 9, 1918, the date of the decedent's death in the instant case, contained in effect the same provisions as those below quoted from the General Laws of 1921. See part IV of c. 490 of the Acts of 1909 and c. 268 of the Acts of 1916.

General Laws of Massachusetts (1921), Vol. 1, Chapter 65 (pp. 666, 669):

TAXATION OF LEGACIES AND SUCCESSIONS

SECTION 7. Taxes imposed by this chapter upon property or interests therein, passing by will or by laws regulating intestate succession, shall be payable to the state treasurer by the executors, administrators or trustees at the expiration of one year from the date of the giving of bond by the executors, administrators or trustees first appointed; except that in all cases where there shall be a devise, descent or bequest to take effect in possession or come into actual enjoyment after the expiration of one or more life estates or of a term of years, the taxes thereon shall be payable by the executors, administrators or trustees in office when such right of possession accrues, or, if there is no such executor, administrator or trustee, by the persons so entitled thereto, at the expiration of one year from the date when the right of possession accrues to the persons so entitled.

SECTION 17. An executor, administrator or trustee holding property subject to the tax imposed by this chapter shall deduct the tax therefrom or collect it from the legatee or person entitled to said property; and he shall not deliver property or a specific legacy subject to said tax until he has collected the tax thereon. An executor or administrator shall collect taxes due upon land passing by inheritance or will which is subject to said tax from the heirs or devisees entitled thereto, and he may be authorized to sell said land, in the manner prescribed by section twenty-one, if they refuse or neglect to pay said tax.

SECTION 18. If a legacy subject to said tax is charged upon or payable out of real estate, the heir or devisee, before paying said legacy, shall deduct said tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien upon said real estate until it is paid. Payment thereof may be enforced by the executor, administrator or trustee in the same manner as the payment of the legacy itself could be enforced.

APPENDIX C

REGULATIONS

Treasury Regulations 68 (1924 ed.), relating to Estate Tax under the Revenue Act of 1924 provides in part:

> ART. 99. *Claim for refund.*—A claim may be filed for refund of any tax, interest, or penalty, alleged to be excessive or illegal, where the payment thereof has been made either upon the basis of the return or as a result of the audit and review thereof. Claims for refund must be presented to the Commissioner within four years next after payment of the amount sought to be refunded. Such claim must be made on Form 843. As in the case of a claim for abatement, the burden of proof rests upon the claimant. All the facts relied upon in support of the claim should be clearly set forth under oath. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1932